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Supreme Court of the United States

OCTOBER TERM, 1905.

NO. 268

AYER & LORD TIE COMPANY, Plaintiff in Error,

vs.

THE COMMONWEALTH OF KENTUCKY, BY FRANK A. LUCAS, REVENUE AGENT OF SAID COMMONWEALTH, Defendant in Error.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

Brief for Defendant in Error.

N. B. HAYS, Attorney General,
CHARLES H. MORRIS,
For Defendants in Error.

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IN ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

Brief for Defendant in Error.

On September 8th, 1902, Frank A. Lucas, revenue agent of Kentucky, filed a statement in the McCracken County Court to require the plaintiff in error to list certain property for taxation, which it had theretofore failed to do. This property consisted of certain-named steamboats and barges. These steamboats and barges *had duly painted on their sterns*, as required under the laws of the United States governing navigation, the words, "*Paducah, Kentucky*," which city is the county seat of McCracken

county, Kentucky. The boats and barges referred to were used to transport railroad ties on the Mississippi, Ohio, Tennessee and Cumberland rivers, adjacent to Paducah, Kentucky; and when said boats and barges were not in use they were kept at the port of Paducah. The value of said boats was given, and such allegations were made as were necessary to subject said property to taxation. (R., 3.)

The plaintiff in error filed its petition in said Court for the removal of said proceeding to the United States Circuit Court for the Sixth Circuit and Western District of Kentucky, which transfer was denied by the State Court. (R., 5.)

It then filed an answer in which it made an issue with the State, as to Paducah, Kentucky, being the "home port" of the vessels, and the right of the State to compel plaintiff in error to pay State taxes; and as to the value of a part of said property, but the value fixed by the plaintiff in error is the same as fixed in the assessment thereafter made. (R., 7.)

The State demurred to the answer filed in the county court, and the Court, after having considered it, overruled said demurrer, to which ruling the State excepted, and declining to plead further, the Court dismissed the statement filed by the State's agent, to which ruling the State excepted and appealed to the McCracken Circuit Court. (R., 10.)

On February 5, 1903, the appeal was heard in the McCracken Circuit Court, and this Court overruled the motion to approve the bond and transfer the case to the United States Circuit Court for the Western District of Kentucky, and denied the petition for removal, to which ruling the plaintiff in error excepted.

The Court then overruled the demurrer of the State to the answer of the plaintiff in error, to which ruling the State excepted, and declined to plead further, whereupon the Court dismissed the statement filed by the State's agent, to which ruling the State excepted and prayed an appeal to the Court of Appeals of Kentucky. (R., 11.)

On December 17, 1903, the Court of Appeals of Kentucky reversed the judgment of the McCracken Circuit Court, and remanded the case in an opinion, affirming the judgment of the McCracken Circuit Court in overruling the motion to approve the bond offered and to transfer the case to the United States Circuit Court for the Western District of Kentucky; and reversing said judgment as to the order of the Court in overruling the State's demurrer to the answer of the plaintiff in error, and held that Paducah was the "home port" of said boats and barges, and the actual situs of said property, and they were subject to taxation in said State, county and city. (R., 15.)

Plaintiff in error then filed its petition for a rehearing in the Court of Appeals of Kentucky. (R., 20.)

Said Court overruled the petition for a rehearing in a response filed March 18, 1904. (R., 30.)

On June 4, 1904, the mandate and opinion of the Court of Appeals of Kentucky were filed in the McCracken Circuit Court, and its former judgment vacated and set aside; said Court thereupon rendered judgment in conformity with said opinion and mandate. (R., 31-2-3-4.)

From this judgment plaintiff in error duly prosecuted an appeal to the Kentucky Court of Appeals, which was affirmed by said Court on March 22, 1905. (R., 40.)

This judgment is now before this Honorable Court for review, on a writ of error to the Court of Appeals of Kentucky.

FIRST QUESTION.

This action is not such as may be originally brought in the United States Circuit Court, and does not come within the provisions of the act of Congress providing for the removal of actions from the State to the Federal courts. The Commonwealth of Kentucky is the real party plaintiff, and is not a citizen within the meaning of said act of Congress providing for removal on the allegation of diverse citizenship.

Postal Tel. & Cable Co. v. Alabama, 155 U. S., 821 (39 : 231).

Fitz v. McGhee, 172 U. S., 518 (43 : 537).

Stone v. South Carolina, 117 U. S., 430 (29 : 430).

In re Ayres, 123 U. S., 443 (31 : 26).

Ferguson v. Ross, 38 Fed., Rep., 161.

C., St. L. & C. R. R. Co. v. Commonwealth, 24 R., 2124.

SECOND QUESTION.

That the owners of boats and barges may be required to pay taxes thereon according to their value, somewhere, we think, is well settled. If the actual *situs* and home port of the boats in question is Paducah, Kentucky, under the laws of the United States governing navigation, then these boats and barges are within the jurisdiction of the State of Kentucky, and the county of McCracken; are protected by the State's laws, and subject to State and county taxation; and if the tax is levied only at the home port, and said boats and barges are valued as other property, and without unfavorable discrimination, because of their employment, it is a valid power of the State. The *situs* of said boats for the purposes of taxation, is Paducah, Kentucky; and being a part of the property of

this State, and said county, they are subject to taxation there, and not elsewhere.

Hays v. Pacific Mail Steamship Co., 58 U. S., 596 (15 : 254).

Transportation Co. v. Wheeling, 99 U. S., 273 (25 : 412).

St. Louis v. Ferry Co., 78 U. S., 432 (20 : 192).

Pullman Pal. Car Co. v. Penn., 114 U. S., 36 (35 : 616).

Moran v. New Orleans, 112 U. S., 75 (28 : 653).

Morgan v. Parham, 83 U. S., 471 (21 : 304).

In Hays v. Pacific Mail Steamship Co., 58 U. S., 596 (15 : 254), the Court said:

> "These provisions, and others that might be referred to, very clearly indicate that the domicile of a vessel that requires to be registered, if we may so speak, or *home port*, is the port at which she is registered, and which must be the nearest to the place where the owner or owners reside. In this case, therefore, the home port of the vessels of the plaintiffs was the port of New York, where they were duly registered, and where all the individual owners are resident, and where is also the principal place of business of the company; and where, it is admitted, the capital invested is subject to State, county and other local taxes. * * *
>
> "The distinction between a vessel in her home port and when lying in a foreign one, or in the port of another State, is familiar in the admiralty law. She is subjected, in many cases, to the application of a different set of principles." *7 Pet.*, 324; 4 *Wheat* 438.
>
> "We are satisfied that the State of California had no jurisdiction over these vessels for the purpose of taxation; they were not, properly, abiding within its limits, so as to become incorporated with the other

personal property of the State; they were there but temporarily, engaged in lawful trade and commerce, with their *situs* at the home port, where the vessels belonged, and where the owners were liable to be taxed for the capital invested, and where the taxes had been paid."

In Transportation Co. v. City of Wheeling, 99 U. S., 273 (25 : 412), the Court said:

"Annual taxes upon ships and vessels for the support of the State government as property, upon a valuation as other personal property, are everywhere laid; nor is it believed that it requires much argument to prove that the opposite theory is unsound and indefensible in principle, as it is contrary to the generally received opinion, and wholly unsupported by any judicial determination. Instead of that, there are many cases in which the courts in refuting the authority of the States to lay duties of tonnage, have admitted that the owners of ships may be taxed to the extent of their interests in the same, for the value of the property. Assessments of the kind, when levied for municipal purposes, must be made against the owner of the property, and can only be made in the municipality where the owner resides."

In Moran v. New Orleans, 112 U. S., 75 (28 : 653), the Court said:

"And it is undoubtedly true, as it has often been judicially declared, that vessels engaged in foreign or interstate commerce, and duly enrolled and licensed under the acts of Congress, *may be taxed by State authority as property;* provided the tax be not a tonnage duty, *is levied only at the port of registry, and is valued as other property in the State, without unfavorable discrimination* on account of its employment."

In Morgan v. Parham, 83 U. S., 471 (21 : 304), the Court said:

"Ships or vessels are required to be registered by the collector of the district in which shall be comprehended the port to which the same shall belong at the time of the registry, which port shall be deemed to be that at, or nearest to, which the owner, if there be but one, or, if more than one, the husband and acting manager usually resides. (1 Stat. at L., 288.) *Permanent registry*, therefore, as appears by this provision, *is required to be made at the home port of the vessel*, and what is meant by the home port is clearly and plainly defined. Registry must be made at her home port, and the same section provides that the name of the vessel, and the port to which she shall so belong, shall be painted on her stern, on a black ground, in white letters of not less than three inches in length. All persons, therefore, have the means of ascertaining the name of the vessel and her home port; and her shipping papers, which include a copy of her register or enrollment, are by law required to furnish the same information. The act of February 18th, 1793, prescribes the terms and shows the effect of an enrollment in another port. In substance, the permanent register is given up to the collector of that port, and a certificate is issued showing the name of the vessel, the port to which she belongs, and that to which she is destined. This certificate is temporary in its character, and is based on the proposition that the vessel belongs, or has her home port, at a different place from that at which she receives this certificate. (Blanchard v. The Martha Washington, 1 Clif., 466; Bk. v. Smith, 74 U. S., XIX, 211.) There was nothing, therefore, in her enrollment in the Port of Mobile that effected her registry in New York, or her ownership in that place, or that tended to subject her to the taxation of the State of Alabama, under the circumstances stated.

"It is the opinion of the Court that the State of

> Alabama had no jurisdiction over the vessel for the purpose of taxation, for the reason that it had not become incorporated into the personal property of that State, but was there temporarily, only, and that it was engaged in lawful commerce between the States, with its *situs* at the home port of New York, where it belonged and where its owner was liable to be taxed for its value."

In Pullman Palace Car Company v. Commonwealth of Pennsylvania, 141 U. S., 18 (35 : 616), the Court said:

> "Ships or vessels, indeed, engaged in interstate or foreign commerce upon the high seas or other waters which are a common highway, and having their home port, at which they are registered under the laws of the United States at the domicile of their owners in one State, are not subject to taxation in another State at whose ports they incidentally and temporally touch for the purpose of delivering or receiving passengers or freight. But that is because they are not, in any proper sense, abiding within its limits, and have no continuous presence or actual *situs* within its jurisdiction, and, therefore, can be taxed only at their legal *situs*, their home port and the domicile of their owners."

"HOME PORT."

The "home port" of boats and vessels engaged in interstate commerce and plying along our navigable rivers, has been fixed by acts of Congress. This gives such boats and vessels a legal situs, which is necessary for the protection of both the owners and the public, as well as to fix the reciprocal relations and duties of the State and the owners as to protection and taxation.

United States Compiled Statutes, 1901, section 4131,

defines what are vessels of the United States, and section 4311 declares that when such vessels are registered or enrolled as therein provided they are vessels of the United States, and by sections 4141, 4178 and 4334, and the act of Congress of June 26, 1884 (U. S. Compiled Statutes, Vol. 3, page 2831), the methods and manner of registry and enrollment are prescribed. Said statutes will be found in the Appendix to this brief.

Under these several acts of Congress such boats and vessels are required to have an legal situs, which is termed their "home port." This requirement is for the benefit alike, of the public and the owners of such boats and vessels. The owner or owners of such boats and vessels, under the act of Congress of June 26, 1884, and section 4178, U. S. Com. Stat. (1901), are required to mark upon the stern of each vessel its "home port." They may select as such home port "the port where the vessel is registered or enrolled, or the place in the same district where the vessel was built, or where one or more of the owners reside;" but when the election has been made, as in this case, its artificial situs becomes for the purpose of taxation, and the owner's right of exemption from taxation elsewhere, its *actual and legal situs;* and when such election has been made, it is subject to taxation at its home port.

Although assessed and taxed in Illinois, the same property is not exempt from taxation in Kentucky.

Plaintiff in error says in its answer (R., 9) that said boats and barges were, during the years of 1899, 1900 and 1901, taxed by the State of Illinois, and, therefore, are

not subject to taxation in Kentucky. Said allegation reads:

> "It says that all of said property during these years was assessed by defendant in the State of Illinois for taxation, and has been taxed and defendant has paid taxes under the statute of Illinois, to said State and city of Chicago, on all of said property, and denies the right of the State of Kentucky to subject same property to taxation."

This is the same contention that was made in this Court in the case of Coe v. Errol, 116 U. S., 517 (29 : 715), wherein the Court said:

> "If the owner of personal property within a State resides in another State which taxes him for that property as part of his general estate attached to his person, this action of the latter State does not in the least effect the right of the State in which the property is situated to tax it also. It is hardly necessary to cite authorities on a point so elementary. The fact, therefore, that the owners of the logs in question were taxed for their value in Maine, as a part of their general stock in trade, if such fact were proved, could have no influence in the decision of the case and may be laid out of view."

ACTUAL SITUS.

Inasmuch as the plaintiff in error is a corporation created and existing under the laws of Illinois, it is a citizen of said State, and its principal office being in the city of Chicago, these boats and vessels can not, therefore, have a home port in Chicago, nor an actual *situs* in said city and State. It follows that their home port and actual *situs*, although different from the domicile of the

owner thereof, must determine their legal *situs;* and their home port being in McCracken county, Kentucky, and the city of Paducah and being constantly employed and used in the streams of Kentucky, and those adjacent thereto, and when not in use kept at Paducah, they are property within the jurisdiction of said city, county and State, for the purpose of taxation, and the right of the State to tax them should not be denied.

Pullman Palace Car Co. v. Penn., 141 U. S., 36 (35 : 613).

American Refrigerator Trans. Co. v. Hall, 171 U. S., 68 (43 : 899).

Old Dominion Steamship Co. v. Virginia, 198 U. S., 302 (49 : 1059).

Northwestern Lumber Co. v. Chehalis County, 87 Am. St. Rep., 747.

National Dredging Co. v. State, 99 Ala., 462.

Norfolk and Western R. R. Co. v. Board of Pub. Works, 97 Va., 23.

Minburn v. Hays, 56 Am. Dec., 366.

Union Trust Co. v. Kentucky, 199 U. S., 194 (October term, 1905).

In Pullman Car Co. v. Penn. (supra), on page 617, the Court said:

> "The State having the right, for the purposes of taxation, to tax any personal property found within its jurisdiction without regard to the place of the owner's domicile, could tax the specific cars, which at a given moment were within its borders." * * *
>
> (Page 618.) "For purposes of taxation, as well as for other purposes, *that situs may be fixed in whatever locality the property may be brought and*

used by its owners, by the law of the place where it is found."

In American Refrigerator Company v. Hall (supra) the Court held (904):

> "It having been settled, as we have seen, that where a corporation of one State brings into another, to use and employ, a portion of its movable personal property, it is legitimate for the latter to impose upon such property, thus used and employed, its fair share of the burdens of taxation imposed upon similar property used in a like way by its own citizens, we think that such a tax may be properly assessed and collected, in cases like the present, where the specific and individual items of property so used and employed were not continuously the same, but were constantly changing according to the exigencies of the business, and that the tax may be fixed by an appraisement and valuation of the average amount of the property thus habitually used and employed."

In Old Dominion Steamship Company v. Virginia (supra) the question presented was whether or not the plaintiff in error, which was a corporation created under the laws of Delaware and a non-resident of Virginia, and all of whose vessels and boats were regularly enrolled and registered under the laws of the United States, outside of the State of Virginia, with the name and the port of said vessels painted on the stern of each of them, was liable for taxes on its boats and vessels used in the navigable waters within the State of Virginia, and the Court held, on page 1062:

> "A State can not regulate foreign commerce, but it may do many things which more or less affect it. It may tax a ship or other vessel used in commerce the same as other property used by its citizens.

* * * That the service in which these vessels were engaged formed one link in a line of continuous interstate commerce may affect the State's power of regulation, *but not its power of taxation.* True, they were not engaged in an independent service, as the cabs in *New York ex rel. Penn. R. R. Co. v. Knight*, 192 U. S., 21 (48 : 325), but being wholly within the State, that was *their actual situs.* And, as appears from the authorities referred to, the fact that they were engaged in interstate commerce does not impair the State's authority to impose taxes upon them as property. Indeed it is not contended that these vessels, although engaged in interstate commerce, are not subject to State taxation, the contention being that they are taxable only at the *port at which they are enrolled.* In support of this contention the two principal cases relied upon are *Hans v. Pacific Mail S. S., Co.*, 17 Howard 596, and *Morgan v. Parham*, 16 Wall., 471 (21 L. ed. 303)." * * *

Then after quoting the sections of the Statutes which require, and set out the manner of registry and enrollment, and stating the objects of registry, the Court continues:

"This object (registry) does not require, and there is no suggestion in the Statutes, that vessels registered or enrolled are exempt from the ordinary rules respecting taxation of personal property. *It is true that by Section* 4141 *there is created what may be called the home port of the vessel, an artificial situs, which may control the place of taxation, in the absence of an actual situs elsewhere*, and to that extent only do the two cases referred to go. * * * Of course, if the enrollment does not exempt vessels from taxation, as other personal property, the place of enrollment whether within or without the State in which the property is actually situated, is immaterial, for other like property is taxable at its actual situs.

"So far as the State authorities are concerned, reference may be made to *Lott v. Mobile Trade Co.* 43 Ala. 578; *National Dredging Co. v. State*, 99 Ala. 462; *Northwestern Lumber Company v. Chehalis County*, 25 Wash. 95, 87 Am. St. Rep., 747.

"*Our conclusion is that where vessels, though engaged in interstate commerce, are employed in such commerce wholly within the limits of a State, they are subject to taxation in that State, although they may have been registered or enrolled at a port outside its limits.*"

In the Northwestern Lumber Co. v. Chehalis County, 87 Am. St. Rep., 747, and which is quoted approvingly in the last above named case (Old Dominion Steamship Co. v. Virginia), it appears that the Company was a corporation organized under the laws of California; that the three tugs "Astoria," "Traveler" and "Printer," all ocean going tugs, were registered at the port of San Francisco, in the State of California, and were assessed and paid taxes in the State of California; that they were engaged in business, plying the waters in the State of Washington, and that the resident manager of the corporation resided at Hoquiam, in Chehalis county, Washington, where they were sought to be taxed by the State and county. The controversy arose over the assessment of the three tugs, and in passing on the validity of the same the Court held:

"Sound reasons exist for the right of the State to tax these vessels that are permanently here transacting local business. They receive the protection of the local government, and if mere registry in another port is conclusive against the right to tax here, a boat can operate in our local waters, confined entirely to local business, and, if owned elsewhere, may evade all taxation in this State. Such construction should not be adopted unless imperatively de-

manded by superior authority. Under the revenue law of this State personal property is taxed at its situs, and without reference to the residence of the owner. We have examined the evidence in this record upon the exception made to the findings of the superior court and fully coincide with the findings. The evidence discloses that for from four to seven years the three tugs have been at Hoquiam, in Chehalis county; that their business has been towing in the waters of Gray's and Willapa harbors in this State; that the corporation plaintiff, for some fifteen years last past, has owned and operated large saw mills, owns large areas of timber lands, and has manufactured from twenty to thirty million feet of lumber annually; that these tugs tow vessels usually from Hoquiam through the harbor to the ocean; that all contracts of towage are made by the captains of the respective tugs, who reside at Hoquiam; that the crews reside there; that the assistant secretary and manager of the company resides there; that all accounts are rendered to him there; that the captain and crews are paid there, and the only absence of the tugs from these harbors shown by the record have been for the purpose of repairs. They appear to have been used for all these years as appurtenant to, and a part of, the lumbering plant and business of the plaintiff in Chehalis county, and upon these facts, we conclude that the situs in fact of the three tugs is in Chehalis county, and that there was a valid assessment levied on their value."

In National Dredging Company v. State, 99 Ala., 462, the Court there held:

> "That in determining the liability of personal property to taxation, *its actual situs*, and not the domicile of the owner, is the material inquiry; and if personal property is brought into this State for the purpose of carrying on certain work, and its business here is not merely transitory, but for an in-

> definite period, it becomes incorporated with the property in this State for revenue purposes, and is taxable here notwithstanding the domicile of the owner in another State. * * * A tug boat, although sea going, propelled by steam, and registered at the port of its owner's domicile in another State, is taxable in this State, when its business is wholly in Alabama, and it is to remain here for an indefinite time."

In Norfolk & Western R. R. Co. v. Board of Public Works, 97 Va., 23, the tugs and barges sought to be taxed were enrolled and registered in the city of Philadelphia, but plied along the navigable streams in Virginia, between Lambert's Point and Norfolk, and in passing on the question of taxation, the Court said:

> "That these tugs and barges are engaged in interstate commerce does not exempt them from taxation; nor does the place of their enrollment or registration fix their situs for taxation, though it is a circumstance to be considered in its determination. The facts in our judgment clearly show that the property in question is owned, and may be lawfully taxed in this State."

In Union Refrigerator Transit Company v. Kentucky, 199 U. S., 194 (Decided November 13, 1905), the Court held:

> "The power of taxation is exercised upon the assumption of an equivalent rendered in the protection of the property and person of the taxpayer, and if such equivalent can not possibly be rendered because the property taxed is wholly beyond the jurisdiction of the taxing power, the taxation thereof within the domicile of the owner amounts to a taking of prop- only without due process of law.
>
> "While there may be individual cases where the

weight of the tax necessarily falls unequally on account of special circumstances the general rule is that in classifying property for taxation, some benefit to the property taxed is a controlling consideration, and a plain abuse of the power in this respect may justify judicial interference.

"The proper use of a legal fiction is to prevent injustice and the maxim *mobilia sequuntur personam* may only be resorted to when convenience and justice so require. That doctrine does not apply to tangible personal property permanently located in another State where it is employed and protected, acquires a *situs* and is subject to be there taxed irrespective of the domicile of the owner; and an attempt on the part of the State in which the owner is domiciled to tax such property amounts to a deprivation of property without due process of law within the purview of the Fourteenth Amendment."

It thus appears that the actual situs and the home port of the steamers and barges in question was and is Paducah, McCracken county, Kentucky; that they are permanently employed along the navigable rivers adjacent thereto, and as said by the Kentucky Court of Appeals. (Record, pages 18 and 19):

"The steamboats involved in this litigation are separated from the residence of their owner by a long distance, in fact they can never visit the port at which their owner resides; they are, so far as their actual situs is concerned, permanently confined to the rivers over which they float; if their home port had to be Chicago, because that is the residence of their owner, as under the law prior to 1884, then they would have a home port from which they could derive no advantage or protection, because they could never reach it. It was to obviate this hardship, with others, that the act of 1884 was passed by Congress, permitting their owners to select for them

a home port in the field of their operations, which is for them a home port in fact, as well as in law and name. Property, such as that under consideration, ought, logically, to be taxed at its own home port; there it can be seen and property valued for assessment by the fiscal officers; whereas, at the residence of its owner, (Chicago) the officers, of necessity, must rely on the statements of the owner for both the existence of the property and its value. At its home port it enjoys the protection of the laws of the jurisdiction in which it is located, and both justice and reason would seem to require that property thus permanently located, both in legal contemplation and in fact, within a jarisdiction foreign to that of its owner, should contribute its fair share to the support of that government whose protection it enjoys."

Hence when there is a difference between the home port and the permanent actual situs, of such boats and vessels, the actual situs will fix the place of taxation of such vessels; but when the actual situs, as in the case at bar, is in part the same as the home port of such vessels, then the home port will determine the place of taxation.

We ask that the judgment of the State Court be affirmed.

N. B. HAYS,
Attorney General,
CHAS. H. MORRIS,
For Defendant in Error.

APPENDIX.

Acts of the General Assembly (1900), Chapter 10, Page 39.

AN ACT to amend an act, entitled "An act to regulate the assessment of property for taxation and the payment thereon, belonging to non-residents of the counties in which the same is situated," approved March 19, 1894.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

§ 1. That an act, entitled "An act to regulate and insure the assessment of property for taxation and payment of taxes thereon belonging to non-residents of the counties in which the same is situated," approved March 19, 1894, be, and the same is, amended as follows, and re-enacted as amended: That section first of said act be amended to read as follows:

"§ 1. That it shall be the duty of all persons owning any real or personal property in this State, other than in the county in which the said owners reside, or if they should reside out of the State, to list the property for taxation, personally, or by an authorized agent, in the county where situated, at the same time and in the same manner as is now required by law of resident owners; or to file a description list of the same between the fifteenth day of September and the fifteenth day of October in each year, with the county clerk of the county where said prop-

erty is located, fixing a fair cash value of the same, and giving the nearest resident thereto, and the number of the magisterial district in which the same is located. Whoever shall willfully fail or refuse to comply with the provisions of this act shall be fined not exceeding fifty dollars, to be recovered by an indictment in the county in which the same is situated: *Provided*, That no fine shall be assessed when the property is assessed and taxes paid by the owner or his agent."

§ 2. That all actions and prosecutions now pending, in which judgment of conviction has not been rendered, shall proceed under the provisions of this act.

Approved March 17, 1900.

Kentucky Statutes, Sections 4039 and 4241.

"§ 4039. That it shall be the duty of all persons owning any real or personal property, mineral rights or standing (branded) trees of any kind whatever, on the lands of another, or any coal, oil or gas privileges, by lease or otherwise, or any interest therein, in this State, other than in the county in which the said owners reside; or if they should reside out of the State, to list the property for taxation, personally or by an authorized agent, in the county where situated, at the same time and in the same manner as is now required by law of resident owners; or to file a descriptive list of the same between the fifteenth day of September and the fifteenth day of October, in each year, with the county court clerk of the county where said property is located, fixing a fair cash value of the same, and giving the nearest resident thereto, and the number of the magisterial district in which the same is located. Whoever shall willfully fail

r refuse to comply with the provisions of this act shall e fined not exceeding fifty dollars, to be recovered by an ndictment in the county in which the same is situated: *Provided*, That no fine shall be assessed when the property is assessed and the taxes paid by the owner or his gent. That all actions and prosecutions now pending n which judgment of conviction has not been rendered hall proceed under the provisions of this act."

"§ 4241. It shall be the duty of the Sheriff or Auditor's gent to cause to be listed for taxation all property omitted, or any portion of property omitted, by the assessor, oard of supervisors, board of valuation and assessment or railroad commission, for any year or years. The officer proposing to have such property assessed shall file in the clerk's office of the county in which the property may be liable to assessment, a statement containing a description and value of the property proposed to be assessed, and the value of corporate franchise, if any, and the name and place of residence of the owner, his agent or attorney, or person in possession of the property, and the year or years for which the property is proposed to be assessed. Within five days after the filing of such statement the clerk of the Court shall issue a summons against the owner to show cause before the next regular term of the county court, which does not commence within five days after service of such summons, why such property or corporate franchise, if any, shall not be assessed at the value named in the statement filed. The summons shall be executed by the sheriff of the county by delivering a copy thereof to the owner, if in the county, if not, then to his agent, attorney or person in possession of the property. At the next regular term of the county court after the notice has been served five days, if it shall ap-

pear to the court that the property is liable for taxation and has not been assessed, the Court shall enter an order fixing the value thereof at its fair cash value, estimated as is required by law; if not liable, he shall make an order to that effect. From so much of the order of the Court deciding whether or not the property is liable to assessment either party may appeal, as in other civil cases, except that no appeal bond shall be required where the Court decides that the property is not liable to assessment or taxation. It the Court shall decide that the propery is liable to assessment, the clerk of the county court shall certify to the Auditor of Public Accounts and the Sheriff a description of the property and the amount of the assessment for taxation, together with the amount of penalty and cost of assessment. All persons owning property which may be assessed as herein provided shall, in addition to the taxes, pay a penalty of twenty per centum on the amount of the taxes due and cost of assessment, except where such property shall have been duly listed by the owner thereof. The taxes and penalties shall be collected and accounted for as other taxes and penalties are required to be collected. As compensation for his services in causing such property to be assessed, the officer filing his statement shall be entitled to the penalty, which shall be paid to him after the full amount of taxes shall have been collected. The county clerk shall enter all such assessments in a book to be kept for that purpose, showing the date of the assessment, the name of the person against whom the assessment is made, the location and quantity of the property assessed, the value fixed thereon; and the officer collecting the tax shall, when the same is paid, notify the clerk of its payment, which payment shall be noted by the clerk opposite the entry of such assessment."

United States Compiled Statutes (1901), Sections 4131, 4141, 4178, 4311 and 4334.

"§ 4131. Vessels registered pursuant to law and no others, except such as shall be duly qualified according to law for carrying on the coasting and fishing trade, shall be deemed vessels of the United States, and entitled to the benefits and privileges appertaining to such vessels; but no such vessel shall enjoy such benefits and privileges longer than it shall continue to be wholly owned by a citizen or citizens of the United States, or a corporation created under the laws of any of the States thereof, and be commanded by a citizen of the United States. And all the officers of vessels of the United States who shall have charge of a watch, including pilots, shall in all cases be citizens of the United States. The word "officers" shall include the chief engineer and each assistant engineer in charge of a watch on vessels propelled wholly or in part by steam; and after the first day of January, eighteen hundred and ninety-seven, no person shall be qualified to hold a license as a commander or watch officer of a merchant vessel of the United States who it not a native born citizen, or whose naturalization as a citizen shall not have been fully completed."

"§ 4141. Every vessel, except as hereinafter provided, shall be registered by the collector of that collection district which includes the port to which such vessel shall belong at the time of her registry; which port shall be deemed to be that at or nearest to which the owner, if there be but one, or if more than one, the husband or acting and managing owner of such vessel, usually resides."

"§ 4178. The name of every documented vessel of the United States shall be marked upon each bow and upon the stern, and the home port shall also be marked upon the stern. These names shall be painted or gilded, or con-

sist of cut or carved or cast roman letters, in light color on a dark ground, or in a dark color on a light ground, secured in place, and to be distinctly visible. The smallest letters used shall not be less in size than four inches. If any such vessel shall be found without these names being so marked the owner or owners shall be liable to a penalty of ten dollars for each name omitted: *Provided, however*, That the names on each bow may be marked within the year eighteen hundred and ninety-seven."

"§ 4334. Every licensed vessel shall have her name, and the port to which she belongs, painted on her stern, in the manner prescribed for registered vessels; and if any licensed vessel be found without such painting, the owner thereof shall be liable to a penalty of twenty dollars."

Act of June 26, 1884, (U. S. Comp. Stat., 1901, p. 2831), reads:

Act of June 26, 1884 (U. S. Comp. Stat., 1901, p. 2831), reads:

"That the word 'port' as used in sections 4178 and 4334 of the Revised Statutes, in reference to painting the name and port of every registered or licensed vessel on the stern of such vessel, shall be construed to mean either the port where the vessel is registered or enrolled, or the place in the same district where the vessel was built or where one or more of the owners reside."

"§ 4311. Vessels of twenty tons and upward, enrolled in pursuance of this title, and having a license in force, or vessels of less than twenty tons, which, although not enrolled, have a license in force, as required by this title, and no others, shall be deemed vessels of the United States entitled to the privileges of vessels employed in the coasting trade or fisheries."